II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 May 2004

on the aid scheme which Italy is planning to implement to assist farmers in the province of Campobasso

(notified under document number C(2004) 1634)

(Only the Italian text is authentic)

(2005/319/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above,

Whereas:

I. PROCEDURE

(1) By letter dated 29 November 2000, recorded as received on 30 November 2000, the Italian Permanent Representation to the European Union notified the Commission, in accordance with Article 88(3) of the Treaty, of Decision No 629 of 29 December 1999 of the Campobasso Provincial Executive.

(2) By letters dated 8 February, 21 February, 12 June and 11 September 2001, recorded as received on 12 February, 28 February, 14 June and 13 September 2001 respectively, the Italian Permanent Representation to the European Union provided the Commission with additional information it had requested in its letters of 12 January, 26 April and 7 August 2001.

(3) By letter dated 13 November 2001 the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid.

(4) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission called on interested parties to submit their comments on the measure in question.

(5) The Italian authorities did not submit any comments on the measure. The Commission has received no comment from other interested parties.

II. DESCRIPTION OF THE AID

1. The aid scheme

(6) The Decision of the Provincial Executive provides for the granting of aid in the form of subsidised loans of up to ITL 20 million (EUR 10 329) at a rate of 2 % for:

— adapting farms to health and hygiene standards in accordance with Decree No 54 of 14 January 1997 adopting the Regulation transposing Directives 92/46/EEC and 92/47/EEC on the production and placing on the market of milk and milk products,

— improving health and safety in the workplace in accordance with Legislative Decree No 626 of 19 September 1994, and subsequent amendments thereto, transposing Directives 89/391/EEC, 89/654/EEC, 89/655/EEC, 89/656/EEC, 90/269/EEC, 90/270/EEC, 90/394/EEC, 90/679/EEC, 93/88/EEC, 97/42/EC and 1999/38/EC on improving health and safety at work,

[1] OJ C 354, 13.12.2001, p. 18.

— adapting food production control standards in accordance with Decree No 155 of 26 May 1997 transposing Directives 93/43/EEC and 96/3/EC on the hygiene of foodstuffs.

(7) By way of indication, the aid scheme covers the following in particular:

— work on building and/or adapting facilities for the treatment of liquid waste,

— work on building and/or adapting milk-collection and storage facilities,

— work on building and/or adapting small-scale electrical installations,

— work on building and/or adapting sanitation facilities,

— work on building and/or adapting livestock housing,

— work on building and/or adapting food-collection and storage facilities,

— the use of building materials that lend themselves to better hygiene.

(8) Aid under the above headings includes planning and construction, the purchase of materials and 'other costs' (covered by 'etc.' in the notification).

(9) The maximum aid intensities are as specified in Article 7 of Council Regulation (EC) No 1257/1999 [1].

(10) The recipients of the aid are owner farmers, farmers practising farming as their main occupation, and groups thereof, registered with the Campobasso Chamber of Commerce.

(11) ITL 150 million (EUR 77 468) has been earmarked for funding the scheme. The latter is set to last until the funds concerned have been used up.

(12) The aid provided for in the Decision of the Provincial Executive may not be combined with other aid having the same purpose. In this connection, recipients must sign a declaration to the effect that they will not apply for other aid for the same purpose. Regular checks are to be carried out in this respect.

2. **Grounds on which proceedings were initiated by the Commission**

(13) The Commission initiated proceedings under Article 88(2) of the Treaty because it had doubts as to whether the scheme was compatible with the common market. Those doubts were as follows.

A. *Doubts regarding the types of investment eligible for aid*

(14) As part of the information they provided before proceedings were initiated, the Italian authorities stated that the maximum authorised aid intensity levels were those applicable under Article 7 of Regulation (EC) No 1257/1999, in other words those specified, for investment in agricultural holdings, at 4.1 of the Community guidelines for State aid in the agriculture sector [2] (hereinafter the Guidelines). The Italian authorities also referred to Measure 4.9 under the Regional Operational Programme, which covers only investment in agricultural holdings.

(15) In the light of that information and the above-mentioned reference, the aid rates applicable would be 50 % in less-favoured areas and 40 % elsewhere, plus, in both cases, an additional five percentage points if the investment is made by young farmers.

(16) The aid could conceivably be covered by three points of the Guidelines:

— 4.1, on investment in agricultural holdings;

— 4.2, on investment in connection with the processing and marketing of agricultural products (the application of this point cannot be ruled out because, according to the information transmitted by the Italian authorities, the recipients are owner farmers ('coltivatori diretti') and farmers generally ('imprenditori agricoli'); according to Article 2135 of Italy's Civil Code, 'imprenditori agricoli are persons who carry on activities aimed at cultivation of the soil, silviculture, livestock farming and related activities', and the latter could include the processing and marketing of agricultural products);

[1] OJ L 160, 26.6.1999, p. 80. Regulation as last amended by Regulation (EC) No 2223/2004 (OJ L 379, 24.12.2004, p. 1).

[2] OJ C 28, 1.2.2000, p. 2. Corrigendum published in OJ C 232, 12.8.2000, p. 17.

— 4.3, on the diversification of farm activities, which refers back to 4.1 and 4.2.

(17) In its letter of 7 August 2001, the Commission department concerned invited the Italian authorities to describe in detail how each of these points had been complied with for each type of recipient. In their letter of 11 September 2001 the Italian authorities replied only that Community rules and provisions would not be overlooked and that, to ensure greater compliance, the Region would follow the same approach as for the management of EAGGF Guidance funds.

(18) Taking account of that reply the Commission verified whether the above-mentioned points of the Guidelines were effectively being complied with.

B. *Doubts regarding the nature and rate of financing of certain types of eligible expenditure*

(19) While on the one hand it could be assumed that the rates of aid would be complied with irrespective of which point of the Guidelines was applicable, since in the case of measures for the processing/marketing of agricultural products, Molise is among the Objective 1 regions and thus qualifies for an aid rate of 50 %, i.e. a figure which is not below the maximum indicated by the Italian authorities in their initial notification, on the other, the percentage of eligible expenditure represented by planning costs was not specified, whereas under the Guidelines it is limited to 12 % of the other items of eligible expenditure.

When proceedings were initiated it was not possible to determine the nature of certain costs covered by the term 'etc.' in the notification.

(20) There was thus a possibility that some of the expenditure in that category might not be eligible and that the aid concerned might constitute operating aid incompatible with the common market.

C. *Doubts regarding the reliability of the criteria used for assessing the viability of the recipients and the latter's compliance with minimum environmental, hygiene and animal welfare standards.*

(21) Points 4.1 and 4.2 of the Guidelines stipulate that the holdings receiving the aid are to be assessed for viability on the basis of their prospects and are to comply with certain minimum environmental, hygiene and animal welfare standards. Moreover, aid may be granted only for products for which there are market outlets. The matter of outlets was not at issue, since the Regional operational programme, which had been approved by the Commission, laid down precise criteria in that respect.

(22) On the question of viability, the Italian authorities had referred to Measure 4.9 under the Commission-approved Regional operational programme, which in turn referred to supplementary programming as regards the criteria applicable. It emerged from the supplementary programming that the indicators used were gross income and the number of man-work units (MWUs) employed on the holding. In order to be regarded as viable, the holding had to have a gross income of at least four or six 'gross income economic size units', depending on the area, and had to employ one MWU at least. This criterion was somewhat vague since, on the basis of the information available, it was not possible to establish what a 'gross income economic size unit' was. Moreover, the number of MWUs employed on the holding does not necessarily reflect its viability. Consequently, when it initiated proceedings, the Commission had doubts regarding the criteria for assessing the viability of the recipients.

(23) As regards compliance with the minimum environmental, hygiene and animal welfare standards, the Commission pointed out that the aid was intended to finance work to be carried out pursuant to decrees transposing directives which, in the supplementary programming, were listed among the minimum requirements which agricultural holdings have to comply with in order to be eligible for aid under the Regional operational programme.

(24) By virtue of the rules governing State aid, agricultural holdings must comply with the above-mentioned minimum requirements in order to be eligible for the aid. Moreover, point 4.1.1.3 of the Guidelines allows the assistance to be granted if the investment is intended to satisfy newly introduced minimum environmental, hygiene or animal welfare standards. It adds that that in such cases account must be taken of any period specified in accordance with the second paragraph of Article 2 of Commission Regulation (EC) No 1750/1999 of 23 July 1999 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ([1]).

(25) In its letter of 7 August 2001 to the Italian authorities the Commission enquired as to the possible nature of any newly introduced standards and when they would be applicable. In their reply, the Italian authorities stated that they would order an expert survey to be carried out to verify that the minimum standards applicable under the Community, national and regional legislation applicable had been complied with.

([1]) OJ L 214, 13.8.1999, p. 31. Regulation as last amended by Regulation (EC) No 1763/2001 (OJ L 239, 7.9.2001, p. 10).

(26) This information did not, however, answer the Commission's questions, insofar as it was not possible to determine which new requirements might be introduced and when they would be applicable. When it initiated proceedings, the Commission could not, therefore, rule out the possibility that the planned aid might be intended solely to fund compliance with standards that were already applicable and were part of the minimum requirements which holdings had to satisfy in order to be awarded aid. Aid granted to holdings which are in breach of Community rules could not be regarded as compatible with the common market.

(27) The Commission therefore had grave doubts as to whether potential recipients satisfied the minimum environmental, hygiene and animal welfare standards applicable by virtue of the Guidelines and, accordingly, as to the eligibility not only of the expenditure concerned but also of the recipients themselves.

D. *Doubts regarding the possible retrospective nature of the aid*

(28) The Commission departments concerned had invited the Italian authorities to provide guarantees that the measures provided for in the Decision of the Provincial Executive would be implemented in accordance with the non-retrospectiveness principle laid down at 3.6 of the Guidelines and to undertake not to grant aid for activities or work initiated prior to the recipient submitting an application and its binding approval by the relevant authorities, once the aid had been approved by the Commission.

(29) Information transmitted by the Italian authorities shows that aid has neither been paid, nor will be paid, without the scheme being approved by the Commission; the latest reply from the Italian authorities does not, however, contain the requested undertaking not to grant aid for activities or work initiated prior to a recipient submitting an aid application and its binding approval by the relevant authorities. Accordingly the Commission could not, when it initiated proceedings, rule out the possibility that retrospective aid without an incentive effect might be granted under the scheme. In this respect too, therefore, the Commission could not but doubt whether the aid was compatible with the common market.

III. COMMENTS SUBMITTED BY ITALY AND OTHER PARTIES

(30) Italy has not, in the wake of the Decision to initiate proceedings under Article 88(2) of the Treaty, transmitted to the Commission departments concerned any comment on the aid in question. Nor has the Commission received any comments from other interested parties.

IV. LEGAL ASSESSMENT

1. Existence of aid within the meaning of Article 87(1) of the Treaty

(31) By virtue of Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(32) The measures in question conform to that definition, in so far as they favour certain types of production (basic agricultural production, since the investment is made at primary production level) and can affect trade, given the wide range of products concerned (in 1998, for instance, Italy's imports and exports of agricultural products totalled ECU 15 222 billion and ECU 9 679 billion respectively; that same year the corresponding figures for intra-Community trade in agricultural products were ECU 128 256 billion and ECU 132 458 billion respectively).

(33) The measure in question thus falls within the definition of state aid laid down in Article 87(1) of the Treaty.

(34) The ban on the granting of state aid is not unconditional. In this particular case the exceptions provided for in Article 87(2) of the Treaty are manifestly inapplicable and indeed have not been invoked by the Italian authorities.

(35) Nor is Article 87(3)(a) of the Treaty applicable, since the aid is not intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

(36) Regarding Article 87(3)(b) of the Treaty, it should be pointed out that the aid in question is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State.

(37) The aid in question is not intended to achieve the objectives referred to in Article 87(3)(d) of the Treaty.

(38) In view of the nature of the measure in question, the only exception which may be invoked is that provided for in Article 87(3)(c) of the Treaty, whereby aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market.

2. **Scrutiny of the compatibility of the aid**

(39) The Decision of the Provincial Executive must be examined in the light of the Guidelines since it is aimed at introducing an investment aid scheme in the agriculture sector and was duly notified by the Italian authorities in accordance with Article 88(3) of the Treaty.

(40) The Guidelines are, by virtue of 23.3 thereof, applicable to new State aids in the agriculture sector, including pending notifications by Member States, with effect from 1 January 2000.

(41) Commission Regulation (EC) No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products [1] is not applicable in this case because it is not possible, on the basis of the information provided regarding the recipients, to determine in every instance whether the aid is intended for small and medium-sized enterprises which are eligible under that Regulation [2].

(42) According to the information transmitted by the Italian authorities, the maximum aid intensities allowed are those laid down in Article 7 of Regulation (EC) No 1257/1999, which correspond to those specified at 4.1 of the Guidelines concerning investment in agricultural holdings. The Italian authorities also referred to Measure 4.9 under the Regional Operational Programme, which covers only investment in agricultural holdings.

(43) In the light of these indications and the above-mentioned reference, the following aid rates are applicable: 40 % in areas other than less-favoured areas and 50 % in less-favoured areas with, in both cases, an additional five percentage points if the investment is made by young farmers.

(44) The aids concerned can, however, be classified as belonging to three types of investment, the conditions for approval of which are laid down at various points of the Guidelines:

— investment in agricultural holdings (4.1);

— investment in connection with the processing and marketing of agricultural products (4.2);

— investments to promote the diversification of farm activities (4.3, which refers back to points 4.1 and 4.2).

(45) By virtue of 4.1 of the Guidelines, state aids for investment in agricultural holdings may be granted subject to the following requirements:

(a) the investment should pursue one or more of the following objectives: to reduce production costs, to improve and redeploy production, to increase quality, to preserve and improve the natural environment, hygiene conditions and animal welfare standards or to promote the diversification of farm activities;

(b) the intensity of the aid must not exceed 40 % (50 % in less-favoured areas). However, in the case of investments made by young farmers the maximum rate of aid rises to 45 % and 55 % respectively;

(c) investment aid may be granted only to holdings the economic viability of which can be demonstrated by an assessment of the prospects of the holding and where the farmer processes adequate occupational skill and competence. Moreover the holding must comply with minimum Community standards regarding the environment, hygiene and animal welfare;

(d) aid may not be granted for investment whose objective is increased production unless normal market outlets can be found for the products concerned;

(e) the eligible expenses cover only: the construction, acquisition or improvement of immovable property; new machinery and equipment, including computer software; general costs, such as architects, engineers and consultation fees, feasibility studies, the acquisition of patents and licences, up to 12 % of the expenditure referred to above; land purchase, including legal fees, taxes and land registration costs;

[1] OJ L 1, 3.1.2004, p. 1.
[2] Cf. first subparagraph of Article 20(2) of the Regulation.

(f) the maximum expenses eligible for support may not exceed the limit for total investment eligible for support set by the Member State in accordance with Article 7 of Regulation (EC) No 1257/1999.

(46) Aid may, in accordance with 4.2 of the Guidelines, be granted for investments in connection with the processing and marketing of agricultural products, subject to the following requirements:

(a) the economic viability of the holdings receiving the aid must be demonstrated on the basis of an assessment of their prospects;

(b) the holdings receiving the aid must comply with minimum standards regarding the environment, hygiene and animal welfare. However, where investments are made in order to comply with newly introduced minimum standards regarding the environment, hygiene and animal welfare, aid may be granted in order to reach these new standards;

(c) the aid rate may not exceed 40 % (50 % in the case of Objective 1 regions).

(d) eligible expenses may include only: the construction, acquisition or improvement of immovable property; new machinery and equipment, including computer software; general costs, such as architects, engineers and consultation fees, feasibility studies, the acquisition of patents and licences, up to 12 % of the expenditure referred to above; land purchase, including legal fees, taxes and land registration costs;

(e) aid may not be granted for products for which normal market outlets cannot be found;

(f) aids for investments with eligible expenses in excess of EUR 25 million must be specifically notified to the Commission in accordance with Article 88(3) of the Treaty.

(47) By virtue of 4.3 the compatibility of aids to promote the diversification of farm activities must be assessed in accordance with 4.1 where the total eligible expenses do not exceed the limit for total investment eligible for support set by the Member State in accordance with Article 7 of Regulation (EC) No 1257/1999. If that limit is exceeded the requirements applicable are those set out at 4.2 of the Guidelines.

(48) The description clearly shows that, irrespective of the exact nature of the investment aids provided for in the Decision of the Provincial Executive, compliance with many of the above-mentioned requirements applicable under the Guidelines, requirements which are intended to determine the compatibility of the investment aid with the common market, is not guaranteed by the Italian authorities, viz.:

(a) the exact nature of the expenses eligible referred to by 'etc.' and a guarantee that the limit of 12 % of the other eligible expenses will be complied with as regards planning costs;

(b) the reliability of the criteria used for assessing the economic viability of the recipients;

(c) compliance, on the part of the recipients, with minimum environmental, hygiene and animal welfare standards;

(d) ruling out the possibility of aid being granted retrospectively under the scheme, i.e. without any incentive effect.

(49) Moreover, the Italian authorities submitted no comment and provided no additional information in response to the Commission letter of 13 November 2001 initiating proceedings.

(50) The Commission has thus not received any additional information which can dispel the doubts it harboured when it initiated proceedings under Article 88(2) of the Treaty.

(51) In the light of the above the Commission feels that the measure notified is incompatible with the Community rules on competition and in particular with Article 87(3)(c) of the Treaty.

V. **CONCLUSIONS**

(52) It may accordingly be concluded that the aid provided for in the Decision of the Provincial Executive constitutes state aid within the meaning of Article 87(1) of the Treaty and does not qualify under any of the exceptions provided for in Article 87(3).

(53) Since Decision No 629 of 29 December 1999 of the Campobasso Provincial Executive was notified in accordance with Article 88(3) of the Treaty, and since, according to information transmitted by the Italian authorities, no aid has been paid under the scheme in question, it is not necessary to require recovery of the aid provided for therein,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Italy is planning to grant, on the basis of Decision No 629 of 29 December 1999 of the Campobasso Provincial Executive, to finance agricultural activities aimed at improving the quality of products and the quality of life of operators is incompatible with the common market.

The aid scheme may accordingly not be implementsed.

Article 2

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 7 May 2004.

For the Commission

Franz FISCHLER

Member of the Commission